Supreme Court of the United States.

OCTOBER TERM, 1976.

No. '76-142

ROBERT W. DICKSON
AND GEORGE A. ROGERS,
APPELLANTS,

v.

STATE OF NEW HAMPSHIRE,
APPELLEE.

ON APPEAL FROM THE SUPREME COURT OF NEW HAMPSHIRE.

Jurisdictional Statement.

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Supreme Court of the United States.

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No.

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v.
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Jurisdictional Statement.

The Opinions Below.

Since both the cases were decided in the same opinion of the New Hampshire Supreme Court and involve identical or closely-related questions, consistent with United States Supreme Court Rule 15(3) a single jurisdictional statement is filed herein covering both cases.

The decision of the Supreme Court of New Hampshire is reported at —— N.H. ——, 355 A. 2d 822 (1976), and appears herein as appendix A.

Jurisdiction.

The orders of the Supreme Court of New Hampshire remanding the cases of the appellants Dickson and Rogers, to the Merrimack, New Hampshire and Milford, New Hampshire District Courts respectively for hearing were entered on March 31, 1976. The appellants filed motions for re-hearing April 9, 1976 with the New Hampshire Supreme Court. These motions for re-hearing, attached as appendix B, were denied April 30, 1976. The notices of appeal were filed on June 16, 1976 with the New Hampshire Supreme Court and with the Merrimack, New Hampshire and Milford, New Hampshire District Courts. These appeals were entered within 90 days from the denial of the motions for rehearing. The jurisdiction of this court is pursuant to 28 U.S.C., § 1257(2). Cases sustaining the jurisdiction of this court are *Baldwin* v. *New York*, 399 U.S. 66 (1970); *Duncan* v. *Louisiana*, 391 U.S. 145 (1968); *Ludwig* v. *Commonwealth of Massachusetts*, 44 U.S.L.W. 5173 (June 30, 1976); but see *Costarelli* v. *Massachusetts*, 421 U.S. 193 (1975); and *Handfield* v. *New Hampshire*, 44 U.S.L.W. 3755 (June 29, 1976), an appeal treated as a petition for a writ of certiorari, and certiorari denied.

Questions Presented.

This appeal involves criminal prosecution arising out of separate and distinct circumstances against the appellants George A. Rogers and Robert W. Dickson. The appellant Dickson was charged in the Merrimack District Court with operating a motor vehicle while under the influence of intoxicating liquor in violation of N.H. RSA 262-A: 62. Prior to the trial in the Merrimack District Court, which would have been held without a jury in

compliance with N.H. RSA 502-A: 11, 12, the appellant made a motion that he be tried in the first instance by jury in the Hillsborough County Superior Court. The motion was granted by the district court and the case was transferred to the Hillsborough County Superior Court. Thereupon, the State moved that the case be remanded to the district court for trial in the first instance without a jury. The defendant objected to this motion and the case was transferred to the New Hampshire Supreme Court on the question of the defendant's right to be tried by a jury in the first instance.

The appellant Rogers was charged in the Milford District Court with operating a motor vehicle while under the influence of intoxicating liquor in violation of N.H. RSA 262-A: 62. Prior to the trial in the Milford District Court, the appellant made a motion to waive his right to be tried in district court pursuant to N.H. RSA 502-A: 11, and to transfer the case directly to the Hillsborough County Superior Court for a trial by jury in the first instance; and a motion to allow a reserve case to be submitted to the New Hampshire Supreme Court on the constitutional questions raised by his motions. The district court granted this motion, and the reserve case was submitted to the New Hampshire Supreme Court on the following questions:

1. Does the two-tier system of trials provided by New Hampshire statutes requiring a defendant to be tried without a jury in the first instance violate the appellant's right to substantive due process of law and to trial by jury as assured by the Sixth and Fourteenth Amendments of the United States Constitution and by pt. I, art. 15 of the New Hampshire Constitution.

2. Does the two-tier system of trials in New Hampshire force the appellant to defend himself twice in order to receive his constitutionally guaranteed right to a jury trial such that his right to due process of law is violated thus making the New Hampshire two-tier trial procedure unconstitutionally burdensome and expensive.

Constitutional Provisions Involved.

Constitution of the United States, Amendment VI:

> "In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury . . . and to have the assistance of counsel for his defense."

Constitution of the United States, Amendment XIV, § 1:

> "nor shall any State deprive any person of life, liberty, or property, without due process of law . . . ."

New Hampshire Constitution, Pt. I, Art. 15:

> "And no subject shall be arrested, imprisoned, despoiled, or deprived of his property, immunities, or privileges, put out of the protection of the law, exiled or deprived of his life, liberty, or estate, but by the judgment of his peers, or the law of the land."

New Hampshire Constitution, Pt. II, Art. 77:

> "And the general court are further empowered to give to the police courts original jurisdiction to try and determine, subject to right of appeal and trial by jury, all criminal cases wherein the punishment is less than imprisonment in the state prison."

Statutory Provisions Involved.

Revised Statutes of New Hampshire, § 502-A: 11:

> "Each district court shall have the powers of a justice of the peace and quorum throughout the state and shall have original jurisdiction subject to appeal of all crimes and offenses committed within the confines of the district in which such court is located which are punishable by a fine not exceeding one thousand dollars or imprisonment not exceeding one year, or both . . . ."

Revised Statutes of New Hampshire, § 262-A: 64-a (Supp. 1973):

> "Whenever any person convicted of a violation of Section 62 appeals, the municipal or district court shall forthwith revoke the license of such person and, in case of a holder of a New Hampshire license, shall return such license together with the court return to the director who shall not re-issue any license until the period of revocation determined by the court has elapsed."

Statement of Facts.

The appellants Robert W. Dickson and George A. Rogers are citizens of the United States and residents of Manchester and Milford respectively. On October 12, 1974, the appellant Dickson was charged with operating a motor vehicle under the influence of intoxicating liquor in a complaint filed in the Merrimack District Court. On March 14, 1975, the appellant Rogers was charged with operating a motor vehicle under the influence of intoxicating liquor in a complaint filed in the Milford District

Court. In New Hampshire, operating while under the influence of intoxicating liquor is punishable by a term of imprisonment for one year and a fine of $1,000. N.H. RSA 651: 2. Upon conviction in the district court by trial before a judge without a jury, a defendant loses his license for a period of at least 60 days but for no more than two years. N.H. RSA 262-A: 62 (Supp. 1974). This offense is categorized by the state of New Hampshire as a misdemeanor and, thus, falls within the original jurisdiction of the district court under N.H. RSA 502-A: 11.

Under the New Hampshire district court system, a defendant is not entitled to a jury trial in the district court. However, after he is convicted in the district court, he may exercise his right to a jury trial by appealing to the New Hampshire Superior Court. N.H. RSA 599: 1 and 592-A: 2. The right of appeal is absolute, and its effect is to vacate the judgment of the district court and to transfer the proceeding for a trial de novo in the superior court. *State of New Hampshire* v. *Green*, 105 N.H. 260, 197 A. 2d 204 (1964). However, where a defendant is convicted with operating a motor vehicle while under the influence of intoxicating liquor as provided in N.H. RSA 262-A: 62, his license is suspended immediately on conviction in the district court and is not reinstated despite his appeal for a jury trial de novo. See N.H. RSA 262-A: 65 (Supp. 1973). In each of the above instances, prior to trial in the district court, the appellant moved to have his case transferred to the superior court for trial by jury in the first instance.

In the case of the appellant Dickson, the motion was granted by the district court and the case was transferred to the Hillsborough County Superior Court. Thereupon, the State's motion for remand and the defendant's

objection to such motion resulted in the case being transferred to the New Hampshire Supreme Court on the issues in question.

In the case of appellant Rogers, his motion to transfer to the superior court for trial by jury in the first instance was denied but the district court granted his motion to allow a reserved case to be submitted to the New Hampshire Supreme Court on the same issues.

Thus, both cases were heard before the Supreme Court on substantially the same issues, and both were remanded to their respective district courts for trial without a jury in the first instance subject to the appellants' right to appeal to the superior court in case of conviction. Thus, the facts surrounding the arrest of the appellants are not an issue in this matter. The issue presented to the Court involves the constitutionality of the trial procedure in the state of New Hampshire which requires the appellant to be tried without a jury in the first instance and only upon conviction and loss of license can he obtain his constitutionally guaranteed right to a jury trial in the superior court.

Federal Questions Presented.

The question presented in these cases is whether the two-tier trial system of the state of New Hampshire complies with the due process and right to jury trial requirements of the United States Constitution. The United States Supreme Court in the case of *Callan* v. *Wilson*, 127 U.S. 540 (1888), held that such a two-tier system does not comply with the requirements of the United States Constitution. The Court recently was confronted with the question of whether the holding in the *Callan* case should be reconsidered in *Ludwig* v. *Commonwealth of Massachusetts*, 44

U.S.L.W. 5173 (June 30, 1976). The Court distinguished the Massachusetts system from the *Callan* holding in that an accused is permitted to "short circuit trial in the first tier by admitting to sufficient findings of fact." *Ludwig, supra,* at 5177. In New Hampshire no such right exists, and the accused must be fully tried in the first tier trial. Thus the questions are substantial in that the appellant's right to a trial by jury in the first instance is violated by the New Hampshire system of requiring the appellant to proceed through a non-jury trial and to be convicted before he is entitled to a jury trial. Additionally, the appellant's right to due process of law is violated in that this system requires that he defend himself twice in order to obtain a jury trial.

THE APPELLANTS' RIGHTS TO A TRIAL BY JURY IN THE FIRST INSTANCE ON A COMPLAINT FOR OPERATING A MOTOR VEHICLE WHILE UNDER THE INFLUENCE OF INTOXICATING LIQUOR AND THE DEFENDANTS' RIGHT TO DUE PROCESS OF LAW ARE IMPERMISSIBLY BURDENED BY THE TWO-TIER TRIAL SYSTEM OF THE STATE OF NEW HAMPSHIRE.

The right of criminal defendants to a trial by jury is fundamental to our system of justice. It is founded in the Sixth Amendment of the United States Constitution which states in pertinent part:

> "In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed . . . ."

Sixth Amendment rights apply to state, as well as federal, court proceedings through the Fourteenth Amendment. *Duncan* v. *Louisiana*, 391 U.S. 145 (1968). The New Hampshire Constitution, pt. I, art. 15, also gives the right of an accused to a jury trial, and states in pertinent part:

> "And no subject shall be arrested, imprisoned, despoiled, or deprived of his property, immunities or privileges, put out of the protection of the law, exiled or deprived of his life, liberty, or estate, but by the judgment of his peers, or the law of the land."

The right of a criminal defendant to a trial by jury applies to serious offenses, both felonies and misdemeanors, where a deprivation of liberty is involved. *Baldwin* v. *New York,* 399 U.S. 66 (1970). There is no question that the charge of operating a motor vehicle while under the influence of intoxicating liquor is a serious offense to which the right to a trial by jury attaches. Under N.H. RSA 262-A : 62, this offense is a misdemeanor punishable by fine or imprisonment, and by revocation of a driver's license for a period of 60 days and not to exceed two years. In addition to these criminal penalties, conviction of this offense also carries a social stigma which can be extremely detrimental to the reputation of the defendant. *Rothweiler* v. *Superior Court of Pima County,* 100 Ariz. 37, 410 P. 2d 479 (1966); see also *State* v. *Hobin*, 256 Minn. 436, 98 N. W. 2d 813 (1959); *Curtis* v. *Rowland*, 64 Wash. 2d 576, 292 P. 2d 815 (1964).

The issue, however, is not whether a defendant charged with operating a motor vehicle while intoxicated is entitled to a jury trial under New Hampshire law, but when such right may be exercised. Because of the statutory scheme for the trial of misdemeanors in New Hampshire, a defendant charged with an offense within the jurisdiction of the district court cannot obtain a jury trial until he has been convicted in the district court and has appealed to the superior court. N.H. RSA 502-A : 11, N.H. RSA 599 : 1.

Since a defendant charged with driving while intoxicated clearly has a right to trial by jury, the relevant inquiry is

whether that right is constitutionally satisfied by the two-tier, or *de novo* trial system of the New Hampshire courts. The New Hampshire Supreme Court has held that both the statute, N.H. RSA 262-A: 62, and the *de novo* trial system are constitutional; *State* v. *Despres,* 107 N.H. 297, 220 A. 2d 758 (1966); *State* v. *Handfield,* ——— N.H. ———, 348 A. 2d 352 (1975), petition for certiorari denied, 44 U.S.L.W. 3755 (June 30, 1976). However, the appellant argues that after an initial bench trial and conviction, the second stage jury trial is inadequate to afford the appellant his constitutionally guaranteed protections. In other words, the *de novo* procedure impairs his right to a jury trial to the extent that he is denied due process of law as guaranteed by the Fourteenth Amendment.

Conviction in the first instance can do irremediable damage to the appellant's reputation particularly where the offense involved is driving while intoxicated. This is true even though the conviction is vacated on appeal. Additionally, the appellant automatically loses his driver's license on conviction. Whether the license is considered a right or a privilege, it has become close to a necessity in modern society. Although under the *de novo* system, the effect of the appeal is to vacate the initial conviction, such appeal does not remove the blot on appellant's character nor reinstate his revoked license.

The *de novo* or two-tier system of trials was invalidated in federal courts by the United States Supreme Court in 1888 in the case of *Callan* v. *Wilson,* 127 U.S. 540 (1888). In that case, the petitioner for *habeas corpus* relief had been convicted in police court for conspiracy and sentenced to 30 days in jail. The Court held that the serious nature of the crime required a jury trial and that the *de novo* type procedure then in effect in the District of Columbia did not

satisfy a defendant's constitutional guarantee of an impartial jury trial. The Court stated:

> "[T]he guarantee of an impartial jury . . . secures . . . the right to enjoy that mode of trial from the first moment, and in whatever court, [the defendant] is put on trial for the offence charged." *Callan* v. *Wilson, supra,* at 557.

Although the holding of the *Callan* case has never been formally extended to apply to state court proceedings, recent Supreme Court cases expanding the right to a trial by jury may, however, effect such extension. *Duncan* v. *Louisiana,* 391 U.S. 145 (1968), *Baldwin* v. *New York,* 399 U.S. 66 (1970).

The Supreme Court of New Hampshire in *State* v. *Gerry,* 68 N. H. 495, 38 A. 272 (1896), spoke at length on the burden which the *de novo* system placed on the right to a jury trial. The burden was allowed only in an exceptional class of cases (i.e., misdemeanors in which a justice of the peace had jurisdiction) and upon the sole ground that it existed when the Constitution was adopted. "In all other cases trial by jury was free." *State* v. *Gerry, supra,* at 500. The court pointed out that the fatal objection to the *de novo* system is that it puts the burden of obtaining a jury trial upon the defendant instead of the state.

> "However free and unobstructed the right of appeal may be, it subjects the accused to the trouble, expense and anxiety of two trials on the issue of guilt or innocence instead of one. . . . The constitutional guarantee is not that the accused shall not be acquitted, but that he shall not be convicted and punished without a jury trial." *State* v. *Gerry, supra,* at 508, 509.

Two recent state supreme court decisions dealing with driving while intoxicated charges indicate the diversity of judicial opinion on the subject. In *State* v. *Holliday,* 109 R. I. 93, 280 A. 2d 333 (1971), the Rhode Island Supreme Court accepted the *Callan* decision that a *de novo* system violates Sixth Amendment rights, and held that those charged with serious misdemeanors were entitled to a jury trial in the first instance. The court used as its major support the cases of *Duncan* and *Baldwin,* reasoning that those cases declare *all* rights granted under the Sixth Amendment are applicable to the states and, thus, the judicial mandate of *Callan* is also applicable. However, the court retained the Rhode Island *de novo* system by affording the right to elect a jury trial in the first instance to a defendant arraigned on a misdemeanor which could result in a sentence in excess of six months.

In *Whitmarsh* v. *Commonwealth,* Mass. Adv. Sh. (1974) 1403, 316 N. E. 2d 610, the Massachusetts Supreme Judicial Court, in dicta, concluded that the *Callan* case was intended to apply to only federal prosecutions. The court also indicated that the law in this area is in such a state of flux that they could not determine whether *Callan,* if reaffirmed, would be interpreted as applying to state court proceedings. Thus, the court announced that the *de novo* trial system in Massachusetts satisfied the jury trial requirements of the Sixth and Fourteenth amendments. See also *Manns* v. *Commonwealth,* 213 Va. 322, 191 S. E. 2d 810 (1972).

In the *Whitmarsh* case, the Massachusetts Supreme Judicial Court reasoned that the defendant gives up nothing by going to trial in the district court, and may actually gain the advantage of a preview of the prosecution's case without having to disclose anything himself. As a practical matter, this is simply not true, particularly in cases which involve the charge of operating a motor vehicle while

under the influence of intoxicating liquor. Aside from the financial and emotional burden of two trials, the defendant does give up his license on conviction in the district court, and may have his reputation irreparably damaged.

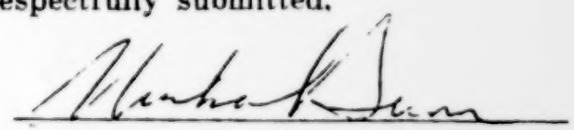
The United States Supreme Court recently decided in the case of *Ludwig* v. *Commonwealth of Massachusetts, supra,* that the Massachusetts "two tier" system of trials did not unconstitutionally burden the exercise of a defendant's Fourteenth Amendment right to a jury trial. The Court concluded that the Massachusetts system did not impermissibly subject the accused to the financial burden of two trials since under that system the accused may "admit to sufficient findings of fact" in the district court. This permits the court to determine probable cause and enter a finding of guilty, but allows the accused to avoid or waive a trial in the district court. See *Ludwig, supra,* at 5174; 30 Mass. Prac., K. Smith, Criminal Practice and Procedure, § 754 (1970). Similarly, the Court determined that the system does not subject the accused to unwarranted psychological or physical effects because of two trials apparently since the accused avoids being "fully tried" in the district court. *Ludwig, supra,* at 5177 (distinguishing *Callan* v. *Wilson,* 127 U.S. 540 (1888)).

In the case at bar, the appellants' submit that the New Hampshire "two-tier" system provided no such saving procedure. The accused must be "fully tried" in the district court and on conviction loses his license despite the entrance of his appeal for a *de novo* jury trial. Thus, the accused must bear the financial, physical, and psychological burdens of two full trials. His right to a jury trial is unconstitutionally burdened.

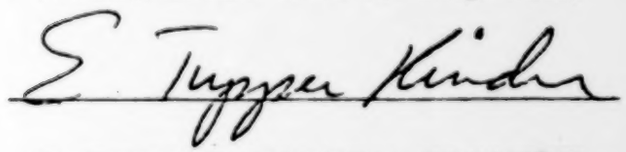
Conclusion.

This appeal raises substantial federal questions dealing with the constitutional rights of criminal defendants in the courts of the state of New Hampshire. Because of the diversity of judicial opinion on the two-tier trial system as reflected by recent decisions of State Supreme Courts and of the United States Supreme Court, this Court should consider those questions presented on these unique circumstances with the benefit of briefs and oral arguments on the merits for their resolution.

Respectfully submitted.



W. MICHAEL DUNN, ESQUIRE,



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Attorneys for Robert W. Dickson
and George A. Rogers.

Dated: July 30, 1976.

Appendix A.

Hillsborough
No. 7269

Milford District Court
No. 7308

State of New Hampshire
v.
Robert W. Dickson
State of New Hampshire
v.
George A. Rogers

March 31, 1976

David H. Souter, attorney general, and *Robert V. Johnson II*, assistant attorney general (*Mr. Johnson* orally), for the State.

Sheehan, Phinney, Bass & Green and *James E. Higgins*, *W. Michael Dunn* and *E. Tupper Kinder* (*Mr. Kinder* orally) for the defendant.

GRIMES, J. The issues in these two driving-while-intoxicated cases are whether our two-tier system requiring defendants to be tried in the district court without jury subject to appeal with a right to trial de novo by jury in the superior court violates defendants' constitutional rights and whether the district court had discretion at defendants' request to transfer before trial cases begun in the district court to the superior court for trial by jury in the first instance.

Each defendant was charged with driving a motor vehicle while under the influence of intoxicating liquor. RSA 262-A:62 (Supp. 1975). The defendant Rogers in the Milford District Court moved (1) for an immediate transfer to the superior court; (2) that if found guilty in district court, the court hold in abeyance the suspension of his driver's license while his appeal was pending; and (3) that if the court believed it lacked jurisdiction to grant either of the other motions, to transfer the questions raised by the motion of this court. The first two motions were denied and the third was granted by *Lizotte, J.*

The defendant Dickson moved in the Merrimack District Court that he be tried first in the superior court. This motion was granted and the court transferred the case to the superior court. The State moved in the superior court that the case be remanded to the district court. The defendant objected, claiming (1) that his right to due process would be violated by requiring him to lose his license pending appeal if convicted without jury in the district court; (2) that he would be denied due process if he is forced to defend twice against the charge in order to obtain a trial by jury; and (3) that a remand would unlawfully limit the inherent power of the district court to transfer the case. All questions of law raised by these objections were transferred without ruling by *Fois, J.*

The constitutionality of our two-tier system and of the suspension of a defendant's license before conviction by jury was upheld in *State v. Handfield*, 115 N.H., , 348 A. 2d 352 (1975). We perceive nothing to distinguish these cases from Handfield and there are no new arguments or developments which warrant any different conclusion than we reached in that case.

The defendants also contend that the district court has the inherent judicial power to transfer these cases to the superior court for trial by jury in the first instance. It is further argued that the superior court can review such action of the district court only for abuse of discretion. RSA 502-A:11 reads in pertinent part, "Each district court shall have . . . original jurisdiction subject to appeal of all crimes and offenses committed within the confines of the district in which such court is located which are punishable by a fine not exceeding one thousand dollars or imprisonment not exceeding one year, or both." RSA 592-A:1 grants to the superior court jurisdiction of all criminal cases, "but it may dismiss a prosecution originally begun therein which is within the jurisdiction of a municipal court." These two statutes taken together, have been construed to mean that the superior court has concurrent but discretionary jurisdiction with the district and municipal courts over misdemeanors. *State v. Blouin*, 110 N.H. 202, 203, 263 A. 2d 677, 678 (1970).

We hold that whatever discretion the district court may have under different circumstances to transfer a case to the superior court for trial in the first instance, it has no authority to do so merely because the defendant seeks to be tried by jury in the first instance. The clear import of the statutory scheme is that cases within their jurisdiction which are begun in the district courts shall be tried there, subject to appeal and trial de novo. One indication of this legislative intent is that although prior to 1965 there was a statutory right to a transfer to the superior court for a jury trial in the first instance, (Laws 1947, ch. 67) this was expressly repealed. See RSA 502:23.

Both cases remanded.

All concurred.

Appendix B.

STATE OF NEW HAMPSHIRE

HILLSBOROUGH, SS. APRIL TERM, 1976

SUPREME COURT

No. 7308

The State of New Hampshire
v.
Robert W. Dickson

MOTION FOR RE-HEARING

Now Comes the Defendant, Robert W. Dickson, and moves for a re-hearing in the above-entitled matter on the following grounds:

1. The Defendant is charged with a serious offense under RSA 262-A: 62, operating a motor vehicle while under the influence of intoxicating liquor, a misdemeanor carrying a maximum penalty of one year in prison and a $1,000 fine. RSA 651: 2
2. Under the 6th and 14th Amendments of the United States Constitution and under Part I, Article 15 of the New Hampshire Constitution, the defendant is entitled to a trial by jury for serious offenses.
3. Because of the structure of the court system in New Hampshire, the defendant must be tried and convicted by a judge in the District Court before he is entitled to a de novo jury trial in the Superior Court.

4. This two tier system of trials results in the Defendant incurring a summary suspension of his motor vehicle license on conviction in the district court pending his de novo jury trial in the Superior Court. Thus, the Defendant is punished before he has an opportunity to be tried by a jury. Additionally, the Defendant is forced to defend himself twice in order to receive his constitutional guaranteed jury trial.
5. The two tier system of trials in New Hampshire is unconstitutionally oppressive in that it obstructs the Defendant's right to a trial by jury in the first instance, and unreasonably impairs this right which is vital to our system of justice.

Wherefore, the Defendant respectfully requests that the Court grant him a re-hearing and for such other relief as may be just.

Respectfully submitted,
Robert W. Dickson
By His Attorneys,
SHEEHAN, PHINNEY, BASS & GREEN
PROF. ASS'N
By: /s/ E. Tupper Kinder
E. Tupper Kinder, Esquire

Dated: April 9, 1976

I certify that on this the 9th day of April, 1976, a copy of this Motion for Re-Hearing was mailed to Robert V. Johnson, II, Esquire, opposing counsel.

/s/ E. Tupper Kinder
E. Tupper Kinder, Esquire

STATE OF NEW HAMPSHIRE

HILLSBOROUGH, SS. APRIL TERM, 1976

SUPREME COURT

No. 7308

The State of New Hampshire
v.
George A. Rogers

MOTION FOR RE-HEARING

Now Comes the Defendant, George A. Rogers, and moves for a re-hearing in the above-entitled matter on the following grounds:

1. The Defendant is charged with a serious offense under RSA 262-A: 62, operating a motor vehicle while under the influence of intoxicating liquor, a misdemeanor carrying a maximum penalty of one year in prison and a $1,000 fine. RSA 651: 2
2. Under the 6th and 14th Amendments of the United States Constitution and under Part I, Article 15 of the New Hampshire Constitution, the defendant is entitled to a trial by jury for serious offenses.
3. Because of the structure of the court system in New Hampshire, the defendant must be tried and convicted by a judge in the District Court before he is entitled to a de novo jury trial in the Superior Court.
4. This two tier system of trials results in the Defendant incurring a summary suspension of his

motor vehicle license on conviction in the district court pending his de novo jury trial in the Superior Court. Thus, the Defendant is punished before he has an opportunity to be tried by a jury. Additionally, the Defendant is forced to defend himself twice in order to receive his constitutional guaranteed jury trial.

5. The two tier system of trials in New Hampshire is unconstitutionally oppressive in that it obstructs the Defendant's right to a trial by jury in the first instance, and unreasonably impairs this right which is vital to our system of justice.

Wherefore, the Defendant respectfully requests that the Court grant him a re-hearing and for such other relief as may be just.

Respectfully submitted,
George A. Rogers
By His Attorneys,
SHEEHAN, PHINNEY, BASS & GREEN
PROF. ASS'N
By: /s/ E. Tupper Kinder
E. Tupper Kinder, Esquire

Dated: April 9, 1976

I certify that on this the 9th day of April, 1976, a copy of this Motion for Re-Hearing was mailed to Robert V. Johnson, II, Esquire, opposing counsel.

/s/ E. Tupper Kinder
E. Tupper Kinder, Esquire